

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Notice of Inquiry Concerning a Review of the
Equal Access and Nondiscrimination
Obligations Applicable to Local Exchange
Carriers

CC Docket No. 02-39

COMMENTS OF AT&T INC.

AT&T Inc. files these comments on behalf of itself and its wholly owned affiliates in response to the Commission's Public Notice asking parties to refresh the record regarding its review of equal access and nondiscrimination obligations applicable to local exchange carriers pursuant to section 251(g) of the Telecommunications Act of 1996 (Notice).¹

Five years ago when the FCC opened this proceeding, AT&T² and other ILECs demonstrated that, even then, the equal access and nondiscriminatory interconnection obligations imposed under the MFJ and maintained under 251(g) no longer served a valid regulatory purpose. In particular, we demonstrated that marketplace developments had obviated the need for the scripting requirement and that other requirements were redundant with other safeguards set forth in the Act and thus, superfluous.

What was true then is all the more true today. Competition in the telecommunications market is flourishing. Since the NOI, competitive options for telecommunications services have increased tremendously. Today, there are a number of providers, including ILECs, CLECs,

¹ FCC Public Notice – *Parties Asked to Refresh Record Regarding Review of Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, CC Docket No. 02-39, DA 07-1071 (rel. March 7, 2007).

² AT&T as used in this document refers to its previous name SBC Communications Inc.

wireless, cable and VOIP providers that all compete in the telecommunications market. As a result, customers are bombarded by telemarketers and advertising from these providers seeking to sell bundles of telecom, video and Internet services. It is beyond belief that in today's market, where customers are choosing not just between long distance carriers but between a myriad of providers operating over a variety of platforms, that customers don't know that they have a choice of long distance providers.

Furthermore, the Commission itself has recognized the competitive market conditions. In the five years since the NOI, the Commission found all of the local exchange markets that were once served by local exchange carrier monopolies subject to the MFJ restrictions to be irreversibly open to competition by granting section 271 approvals to all of the former Bell Operating Companies (BOCs). In addition, the section 272 structural and transactional requirements associated with the former BOCs' provision of interstate interLATA services have sunset for all of these companies. Even more significant is the Commission's finding that Qwest lacks market power in the provision of interstate interLATA telecommunications services and granted Qwest the freedom to provide its in-region interstate interLATA services subject to non-dominant regulations, free from tariff filing requirements and other burdensome dominant carrier regulations.³

Despite today's market conditions, the equal access requirements impose burdens with no corresponding benefit and continued application can no longer be justified. As discussed in AT&T's and other comments in this proceeding, the majority of these requirements are

³ Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets, WC Docket No. 05-333, Memorandum Opinion and Order, 22 FCC Rcd 5207 (2007) ("*Qwest Order*"). AT&T hopes to soon receive similar relief from the 272 requirements as it filed a forbearance petition similar to the Qwest Petition. See Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160(c) With Regard To Certain Dominant Carrier Regulations for In-Region, Interexchange Services, WC Docket No. 06-120 (filed June 2, 2006). In addition, AT&T is actively working with the Wireline Competition Bureau to achieve industry-wide relief in this area in WC Docket 02-112, *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*.

redundant with other statutory provisions or Commission rules and others simply serve no purpose in today's competitive environment.⁴ Specifically, the Commission should find that the equal access scripting requirement has outlived its usefulness and eliminate it altogether, and find that the remaining equal access and nondiscriminatory interconnection requirements from the MFJ have been fully implemented by: the nondiscrimination and pricing requirements contained in sections 201, 202, 203, and 272(e), the section 251(b)(3) dialing parity requirements, and the interconnection requirements imposed by section 251 and the corresponding panoply of Commission orders implementing that section.

I. THE COMMISSION SHOULD ELIMINATE THE EQUAL ACCESS SCRIPTING REQUIREMENTS.

The Commission should eliminate the requirement for BOCs to offer to read a list of interexchange carrier providers (IXCs) when a new customer calls a BOC to order telephone service. As discussed previously, these requirements force AT&T and other BOCs to market their services inefficiently, by reading a list of long distance providers to new local customers. These obligations were created over twenty years ago before long distance competition had developed, to ensure that the public knew that they had a choice of long distance providers. Times have changed. Over the years, long distance carriers, in the face of fierce competition have spent millions, if not billions, in advertising and aggressive marketing campaigns to sell their services to customers through the use of promotional offerings, such as AT&T's "Reach Out" and MCI's "Friends and Family" program.

⁴ See Comments of SBC Communications Inc. in CC Docket No. 02-39 (filed May 13, 2002); Comments of Verizon in CC Docket No. 02-39 (filed May 10, 2002); Comments of BellSouth in CC Docket No. 02-39 (filed May 10, 2002); Reply Comments of SBC Communications Inc. in CC Docket No. 02-39 (filed June 10, 2002); Reply Comments of Qwest Services Corporation in CC Docket No. 02-39 (filed June 10, 2002); and Reply Comments of Verizon in CC Docket No. 02-39 (filed June 10, 2002).

Moreover, today's customers have even more choices, including a multitude of providers offering service over a variety of platforms. Based on the Commission's most recent *Trends In Telephone Service* report, the number of registered IXC's tripled to 257 since 1993.⁵ In addition to traditional IXC's, customers may also choose from a variety of technologies for their telephone services. For example, cable telephony services are targeted at some 73 million cable customers, and take rates for cable telephony offers have approached 20 percent in some markets.⁶ Cox offers voice service in every market within its footprint and provides voice service to more than 2.1 million residential and business customers.⁷ Likewise, Cablevision offers voice services in each of its local markets, has 1.3 million subscribers, and reports a penetration rate of more than 28.7 percent of homes passed.⁸ Time Warner Cable continues to roll out its digital telephony service and already boasts 2.1 million voice subscribers.⁹

Furthermore, consumers increasingly substitute their traditional wireline service with wireless services. The Wireless Competition Bureau reports that 7.8% of adults lived in households with only wireless phones¹⁰ and according to the Commission's *Trends In Telephone*

⁵ Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *Trends In Telephone Service*, at Table 9.4 (February 2007).

⁶ See The Insight Research Corporation, *Cable Telephony: The Threat to Small Business ILEC Markets 2007-2012* (April 2007).

⁷ Cox News Release, Cox Answers the Phone and Says "Hello" to Continued Growth (May 1, 2007), <http://phx.corporate-ir.net/phoenix.zhtml?c=76341&p=irol-newsArticle&t=Regular&id=993351&>.

⁸ Cablevision News Release, Cablevision Systems Corporation Reports First Quarter 2007 Results (May 3, 2007), http://www.cablevision.com/pdf/Q107_earnings.pdf.

⁹ Time Warner Inc. Press Release, Time Warner Reports First Quarter 2007 Results (May 2, 2007), <http://ir.timewarner.com/downloads/1Q2007earnings050207.pdf>.

¹⁰ Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, WT Docket No. 06-17, Eleventh Report (rel. Sept. 29, 2006) at ¶ 205.

Service report, there are more wireless subscribers in the United States than switched access lines.¹¹

In addition to wireless substitution, independent VOIP providers are unquestionably making an impact on the telecommunications market. Analysts estimate that VoIP telephony will top 25 million U.S. households by 2012.¹² Vonage, the largest of the independent VoIP providers, has the most market share of in this segment reporting 2.4 million customers in the first quarter of 2007.¹³ With the explosion of broadband penetration, competition by VoIP providers will only increase.

Consequently, customers are able to avail themselves of bundled local and long-distance service packages offered by BOCs, CLECs, wireless carriers, cable providers and even VOIP providers. In these circumstances, it is simply inconceivable that customers are unaware that they have a choice of long distance providers.

The overwhelming majority of the competitive alternatives discussed above have no obligation and no incentive to offer stand-alone long distance service, which further illustrates the chasm between today's competitive marketplace and the MFJ-era that warranted a scripting a requirement. Further, when analyzing the long distance market, the Commission has found that stand-alone long distance services is a "fringe market."¹⁴ Yet, AT&T and other ILECs are still required to offer to read a list of potential providers of long distance services even though many

¹¹ *Trends In Telephone Service*, at Tables 8.4 and 11.3. (Reporting 172 million switched access lines and 217 million wireless subscribers as of June, 2006).

¹² *VoIP Monitor, VoIP News* (May 7, 2007); <http://www.voipmonitor.net/2007/05/07/VoIP+Market+Will+Top+25+Million+US+Households+By+2012.aspx>.

¹³ Vonage Holdings Corp. Reports First Quarter 2007 Results (May 10, 2007), <http://pr.vonage.com/releasedetail.cfm?ReleaseID=241945>.

¹⁴ *Qwest Order* at ¶ 16.

of the competitive alternatives do not offer stand alone LD service. This further illustrates that this requirement has outlived its usefulness.

Not only is this requirement unnecessary, but the equal access scripting requirement is also very costly and burdensome. As a result of this requirement, AT&T and the other former BOCs are required to inform new customers that they have a choice of long distance providers and offer to read from a list of available carriers. AT&T estimates that this disclosure costs it over \$1.5 million annually in service representative time. The scripting requirement imposes other costs as well, including the cost of maintaining separate long distance carrier lists for each jurisdiction in which AT&T's ILECs provide service. First, because not all IXC's provide service in all states, AT&T must maintain a separate and distinct list for each of the 22 AT&T in-region states. These lists must be compiled and populated on a variety of systems that are used to support service representatives' interactions with customers. Furthermore, the lists must be continually updated, which requires monitoring the changes in the respective IXC's for each state and resequencing the list to ensure the IXC's are read in random order. Clearly, the expenses associated with this requirement are significant and unjustified in today's marketplace.

Under these circumstances, the equal access script requirement clearly has outlived its usefulness and is no longer necessary to inform consumers of their right to select an IXC. Accordingly, the Commission should eliminate this requirement.

II. THE TEAMING AND MARKETING ISSUES DISCUSSED IN THE NOI ARE MOOT.

The NOI requested comment on several marketing issues, such as what type of marketing agreements between BOCs and interLATA carrier's are permissible under 251(g) and what type of marketing activities the BOCs could engage in with their interLATA affiliates.¹⁵ Pursuant to

¹⁵ Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers, CC Docket No. 02-39, Notice of Inquiry, 17 FCC Rcd 4015, ¶¶ 15, 16 (2002).

the Commission's holding in its Non-Accounting Safeguards Order, any such equal access requirements associated with "teaming" that were imposed by the MFJ sunset when the BOCs received 271 approval.¹⁶ Accordingly, the teaming issues are moot since all of the BOCs have section 271 authority to provide in-region interLATA telecommunications services and may market and sell interLATA services.

Likewise, the marketing issues raised in the NOI no longer require Commission intervention. Not only have the BOCs received 271 approvals to provide in-region interLATA telecommunications services, but the section 272 structural and transactional requirements associated with the BOC's provision of in-region interLATA telecommunications have sunset for all of the BOCs and the BOCs that still comply with these obligations only do so on a voluntary basis to receive freedom from certain dominant carrier regulations. The BOCs have marketed and sold in-region interLATA services over the last five years based on guidance provided by the Commission in its *Non-Accounting Safeguards Order*, *LEC Classification Order*, the various 271 Orders and teaming Orders.¹⁷ In the absence of further Commission guidance, collectively these Orders provided the framework the BOCs used to develop their policies and practices for joint marketing their 272 affiliates' interLATA services. Each of the

¹⁶ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, para 293 (1996) (*Non-Accounting Safeguards Order*).

¹⁷ In the Matter of AT&T Corporation, et al. Complainants v. Ameritech Corporation, Defendant, and Qwest Communications Corporation, Defendant –Intervenor; AT&T Corporation, et al., Complainants, v. U.S. West Communications, Inc., Defendant and Qwest Communications Corporation, Defendant-Intervenor; McLeod USA Telecommunications Services, Inc., et al., Complainants, v. U.S. West Communications, Inc., Defendant, File Nos E-98-41, E-98-42 and E-98-43, Memorandum Opinion and Order, 13 FCC Rcd 21438 (1998) (*Qwest Teaming Order*); In the Matter of MCI Telecommunications Corporation, Complainant v. Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, Ohio Bell Telephone Company, Wisconsin Bell, Inc., d/b/a Ameritech Operating Companies, and Ameritech Communications, Inc., Defendants, File No. E-97-19A, Memorandum Opinion and Order, 15 FCC Rcd 23184 (2000) (*1-800 Ameritech Order*); and In the Matter of AT&T Corp., Complainant, v. NYNEX Corporation, New York Telephone Company, and New England Telephone and Telegraph Company, Defendants, File No. E-97-05B, Memorandum Opinion and Order, 16 FCC Rcd 16087 (2001) (*NYNEX Order*).

BOCs have been audited at least three times for compliance with the relevant Commission requirements and moreover, the Commission has not found any BOC non-compliant or deficient in this area. Accordingly, the BOCs demonstrated that further regulatory intervention was unnecessary five years ago and continues to be unnecessary now.

III. THE REMAINING EQUAL ACCESS AND NONDISCRIMINATORY INTERCONNECTION REQUIREMENTS ARE REDUNDANT WITH OTHER STATUTORY PROVISIONS AND COMMISSION RULES.

As demonstrated in previous comments, the remaining components of the equal access and nondiscriminatory interconnection requirements from the MFJ are redundant with other sections of the Act or Commission rules. Specifically, the MFJ required the BOCs to offer exchange access, on an unbundled, tariffed basis, that is equal in type, quality and price. This requirement is redundant with several sections of the Act, including the general nondiscrimination requirements in sections 201, 202 and 203 and the nondiscrimination requirements specifically applicable to exchange access found in sections 272(e)(1) and 272(e)(3).

The MFJ also required the BOCs to separately tariff each exchange access service. This requirement is fully implemented in the Commission's access services regime found in Part 69 and section 61.26 of the Commission's rules, which provides tariffing and pricing requirements for exchange access services.

Similarly, the dialing parity requirements including in the MFJ equal access requirements are redundant with section 251(b)(3) of the Act.

Likewise, the MFJ's non-discriminatory interconnection requirements carried over by section 251(g) are fully implemented by sections 251(a), (b) and (c) of the Act and the Commission's rules contained in Part 51. The non-discriminatory interconnection requirements

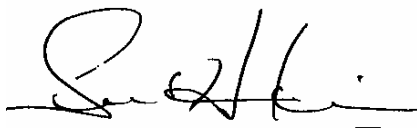
preserved by 251(g) require the BOCs to establish and disseminate technical information and interconnection standards on a non-discriminatory basis and prohibit the BOCs from discriminating in providing interconnection and use of BOC telecommunications services and facilities or in the charges for each element of service.¹⁸ Since the 1996 Act, the Commission has devoted significant time and resources to define and refine the ILECs' rights, obligations and duties for interconnection. As a result, the Commission has amassed a comprehensive set of rules associated with interconnection that surpass the level of direction provided by the MFJ. As a result, the specific MFJ interconnection requirements are a mere subset of today's interconnection requirements, which alone are more than adequate to prevent abuses in the marketplace. Accordingly, the MFJ version of these requirements is no longer necessary and Commission should find that 251(g) has been fully implemented by other sections of the Act or Commission's rules.

IV. CONCLUSION

For all of the reasons discussed above, the Commission should eliminate the equal access scripting requirement and find that the remaining equal access and non-discriminatory interconnection requirements preserved by section 251(g) are fully implemented by other sections of the Act or Commission rules.

¹⁸ AT&T previously listed the MFJ's non-discriminatory procurement obligation as one of the non-discriminatory interconnection requirements that were carried over under section 251(g). Upon further analysis, AT&T agrees with the other commenters that the MFJ's non-discriminatory procurement obligation was not preserved by section 251(g) as it does not involve equal access or interconnection with the BOCs' networks.

Respectfully submitted,

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